

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

EUGENE L. CHERRY,

Plaintiff,

v.

Case No. 18-C-1602

Appeal No. 20-2688

JEAN LUTSEY, et al.,

Defendants.

ORDER

On September 1, 2020, the court issued an order denying the plaintiff's motion for summary judgment, granting the defendants' motions for summary judgment, and dismissing the case. Dkt. No. 98. The plaintiff filed a notice of appeal, Dkt. No. 104, and on September 24, 2020, this court granted him leave to appeal without prepaying the entire appellate filing fee and assessed an initial partial appellate filing fee of \$1.72, Dkt. No. 111. The plaintiff now requests the initial partial appellate filing fee be taken from his release account, citing insufficient funds to make the payment. Dkt. No. 112. The court will grant the motion, in part.

The language of 28 U.S.C. § 1915(b)(1) suggests that a prisoner's release account may be invaded to satisfy an initial partial payment if insufficient funds are available in his regular account. *Carter v. Bennett*, 399 F. Supp. 2d 936, 936–37 (W.D. Wis. 2005). Accordingly, the court will grant the plaintiff's motion and direct the prison officials to pay the initial partial filing fee assessed by the court out of the plaintiff's release account, to the extent that funds in his regular account do not cover the entire amount. Thereafter, however, all payments towards the balance of the appellate filing fee must be made out of the plaintiff's regular account.

The Clerk is directed to send a copy of this order to the officer in charge of the agency where the plaintiff is held.

SO ORDERED at Green Bay, Wisconsin this 6th day of October, 2020.

s/ William C. Griesbach

William C. Griesbach

United States District Judge